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3                   UNITED STATES DISTRICT COURT  
4                   WESTERN DISTRICT OF WASHINGTON  
5                   AT TACOMA

6                   CHASSIDY F. LUCAS, et al.,  
7  
8                   Plaintiffs,

9                   JOE CAMACHO, et al.,  
10                  Defendants.

CASE NO. C11-5350BHS

ORDER DENYING  
DEFENDANTS' MOTION TO  
DISMISS

11                  This matter comes before the Court on Defendants George and Lori Parker's  
12 ("Parkers") motion to dismiss and to grant counterclaim (Dkt. 51). The Court has  
13 reviewed the brief filed in support of the motion and the remainder of the file and hereby  
14 denies the motion for the reasons stated herein.

15                  **I. PROCEDURAL HISTORY**

16                  On May 5, 2011, Plaintiffs Chassidy Lucas, Bianca Lucas, and CB Stormwater  
17 ("Plaintiffs") filed a complaint against Defendants Joe Camacho, Deborah Camacho,  
18 Angela Stephenson, and the Parkers. Dkt. 1. Plaintiffs allege, in part, that they possess a  
19 valid patent that is being infringed by the Parkers. *Id.* at 4-7.

20                  On August 18, 2011, the Parkers file a motion to dismiss and to grant their  
21 counterclaim. Dkt. 51. Although Plaintiffs have filed various documents, they have  
22 failed to file a responsive brief.

23                  **II. DISCUSSION**

24                  Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil  
25 Procedure may be based on either the lack of a cognizable legal theory or the absence of  
26 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*, 901  
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1 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the  
2 complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301  
3 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed  
4 factual allegations but must provide the grounds for entitlement to relief and not merely a  
5 "formulaic recitation" of the elements of a cause of action. *Bell Atlantic Corp. v.*  
6 *Twombly*, 127 S. Ct. 1955, 1965 (2007). Plaintiffs must allege "enough facts to state a  
7 claim to relief that is plausible on its face." *Id.* at 1974. When deciding a motion to  
8 dismiss, the Court's consideration is limited to the pleadings. Fed. R. Civ. P. 12(d).

9 In this case, reading the Plaintiffs' pro se complaint liberally and taking the  
10 material allegations as true, Plaintiffs state a plausible claim for patent infringement. The  
11 Parkers' denial of the allegations and additional evidence outside the complaint are  
12 insufficient to establish that Plaintiffs' complaint is subject to dismissal. Therefore, the  
13 Court denies the Parkers' motion to dismiss.

14 With regard to the Parkers' motion to grant their counterclaim, the Parkers have  
15 failed to show that they are entitled to judgment as a matter of law or that there is no  
16 question of material fact on each element of their counterclaim. *See* Fed. R. Civ. P. 56.  
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### 18 III. ORDER

19 Therefore, it is hereby **ORDERED** that Parkers' motion to dismiss and to grant  
20 counterclaim (Dkt. 51) is **DENIED**.

21 DATED this 7th day of October, 2011.

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BENJAMIN H. SETTLE  
United States District Judge